

THE HON'BLE MR JUSTICE V.V.S.RAO

-
WRIT PETITION No.8607 of 2004

-
29.9.2006

Between:

Smt.B.Suguna, W/o.Late B.Srihari

And others

... Petitioners

AND

The Commissioner of Appeals,

O/o.Chief Commissioner of Land Administration,

Nampally, Hyderabad and others

...Respondents

THE HON'BLE MR JUSTICE V.V.S.RAO

-
WRIT PETITION No.8607 of 2004

ORDER:

The petitioners 2 and 3 are sons of the first petitioner. They filed the present writ petition challenging the order of the first respondent dated 29.1.2004. By the said order, the first respondent dismissed the revision petition filed by them under Section 14A of the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 (the Act, for brevity) confirming the orders of the Inams Deputy Tahsildar, Chittoor, who rejected the claim of B.Srihari, the husband of the first petitioner, for grant of ryotwari patta in respect of land admeasuring Acs.2.00 in survey No.458 situated at Tiruchanur Village, on the ground that the land in the said survey number is classified as Swarnamukhi River Poramboke vested in the Government under Section 2A of the Act.

The petitioners allege that Mahant Prayag Dasji granted a permanent patta on 16.2.1939 to B.Rama Naidu, the grandfather of Srihari. The original allottee and after his death, his son Sankarappa Naidu, were paying the revenue to concerned Authorities. The Inams Deputy Tahsildar granted ryotwari patta dated 15.12.1980 to the mother-in-law of the first petitioner. But the Commissioner of Survey and Settlements set aside the patta and remanded the matter to Original Authority to conduct fresh enquiry. After such fresh enquiry, the Inams Deputy Tahsildar issued orders dated 06.5.1991 rejecting ryotwari patta. The said order was confirmed by the Appellate Authority – the second respondent herein; on 28.11.2002 as well as the Revisional Authority – the first respondent herein; on 29.1.2004. The writ petition is filed challenging the said order of the Appellate Authority and also seeking a direction to the respondents to grant ryotwari patta to the petitioners.

This Court admitted the writ petition on 16.6.2004 and also passed interim orders of *status quo*. The respondents 1 to 3 filed W.V.M.P. No.1591 of 2006 and at that stage itself, the matter was heard finally. In the counter affidavit filed by the third respondent, it is stated that after coming into force of the Act, Inams Deputy Tahsildar

rendered a decision classifying the land of Swarnamukhi River Poramboke as communal land under Section 2A of the Act. The said decision was published in the District Gazette No.9, dated 03.9.1984. The same was not challenged and has become final. As the communal lands vest in the Government free from all encumbrances, the application made by the mother-in-law of the first petitioner for grant of ryotwari patta was rejected by the Inams Deputy Tahsildar on 06.5.1991, which was confirmed by the Appellate as well as Revisional Authorities. The decisions of all the Authorities are based on facts and, therefore, the correctness of the concurrent findings on the same is not amenable to the writ jurisdiction of this Court.

There is no dispute that grant of ryotwari patta under Section 7(1) of the Act, in relation to communal lands, porambokes, grazing lands, waste lands, forest lands, mines and quarries, tanks, tank-beds and irrigation works, streaks and rivers, fisheries and ferries, etc., is prohibited. Though there was no such provision when the Act was enacted, Section 2A was inserted by Amendment Act 2 of 1975, which declares that notwithstanding anything in the Act, lands of the above description vest in the Government. Section 3 of the Act deals with determination of inam lands. It requires the Tahsildar to enquire and determine whether a particular land is inam land; whether such inam land is in ryotwari, zamindari or inam village; and whether such inam land is held by any institution. After conducting such enquiry, the decision of the Tahsildar/Revenue Court shall be published in the Gazette. In this case, the Inams Deputy Tahsildar, Chittoor, published a notification in the Gazette under subsections (3) and (4) of Section 3 of the Act, separately showing the lands held by the Institution and communal poramboke land vested in the Government. The land admeasuring Acs.149.25 in survey No.458 classified as Swarnamukhi River Poramboke is included among communal poramboke lands. The decision of the Revenue Court was published in the District Gazette dated 03.9.1984.

Learned Counsel for the petitioners, however, submits that in 1980 itself, the mother-in-law of the first petitioner granted a ryotwari patta by Inams Deputy Tahsildar, which would belie the contention that it is a river poramboke land. Secondly, he would submit that Section 2A of the Act operates prospectively and the same does not take away the right of an occupant of the land even it is a communal land. He placed reliance on the decision of this Court in **Gajuwaka Gram**

Panchayat v M.V. Suryanarayana^[1]. Refuting the said contention, learned Assistant Government Pleader for Revenue (General) submits that whether under the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 or the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 (the Act), a ryotwari patta cannot be granted in respect of the communal lands. He placed reliance on the decision of a Full Bench of this Court in **Pamidimarri Chenchulakshmma v E.A.Tribunal**^[2].

The submission that by reason of patta granted in 1980, the land cannot be treated as a communal land is misconceived. In the scheme of the Act, unless and until all necessary steps are completed under Section 3 of the Act and unless and until notification is published in the Gazette under Section 3(6) read with subsections (3) and (4) of Section 3 of the Act, grant of ryotwari patta does not arise. In this case, copy of the District Gazette dated 03.9.1984 is annexed to the counter affidavit. The same would clearly show that the decision of the Revenue Court notifying the lands held by the Institution and lands which are not held by the Institution was made known only in September 1984. Even if the mother-in-law of the first petitioner had obtained a patta, the same has no relevance. Presumably for that reason, the Commissioner of Survey and Settlements allowed the revision filed by the Government and remanded the matter to Inams Deputy Tahsildar. The submission that Section 2A of the Act operates prospectively is also of no assistance to the petitioner. In **Gajuwaka Gram Panchayat** (supra), Gajuwaka Gram Panchayat claimed the land as inam land. This was negated by the Division Bench. In that context, it was observed as follows.

From such facts, the finding was reached of the land not being in the nature of poramboke or a tank-bed. There is nothing shown to us to interfere with such finding of fact. Section 2-A of the Inam Abolition Act would obviously operate prospectively to vest only such lands which continue to enjoy the inam character on the date when the Section comes into force and cannot be resorted to vest lands which had ceased to be of that nature and sold as such much prior to the Section coming into force. As such since there is no case that the land had vested as inam in the State Government being poramboke or tank-bed, the question of State Government

being impleaded as a party did not arise, and the mere fact that the District Collector granted permission to construct upon the lands would not defeat the title of the respondents if it otherwise inheres in them.

Section 2A of the Act came into force in 1975 and having regard to the *non-obstante* clause, all the communal lands mentioned therein vest in the Government free from all encumbrances and, therefore, the petitioners cannot succeed in getting the patta. The Full Bench of this Court in **Pamidimarri Chenchulakshmma** (supra), in the context of Estates Abolition Act, held as follows.

The following principles emerge from the aforesaid discussion; Lanka Lands, lands of the description specified in Section 3 (16) (a) (b) and (c) of the Estates Land Act, and forest lands are excluded from the purview of Section 13(b) (iii) of the Abolition Act and no ryotwari pattas could be granted to the landholder under that provision in respect of those lands. The mere non-user of the communal lands for the purposes for which they were intended and set apart, as on the date of the application of the Abolition Act to the estate is not material and does not alter their communal character, if, by the time the Abolition Act came to be applied to the estate in which they are situate, they are lands coming within the description specified in Section 3 (16) (a) (b) and (c) of the Estates Land Act. Despite the disuse to which they have fallen and despite the other users they have been unauthorisedly and illegally put to they would nonetheless continue to be lands belonging to the category specified in Section 3 (16) (a) (b) and (c) of the Estates Land Act in the absence of any order under Section 20-A (1)(b) of the Estates Land Act.

In the result, for the above reasons, the writ petition fails and is accordingly dismissed. No costs.

(V.V.S.RAO, J)

September , 2006.

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[\[1\]](#) 1995(2) ALT 113 (DB)

[\[2\]](#) AIR 1972 AP 1 (FB)